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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

Supreme Court No. R-20-0015

**PETITION TO AMEND RULE 22.5,
ARIZONA RULES OF CRIMINAL
PROCEDURE**

**COMMENT OF
THE ARIZONA PROSECUTING
ATTORNEYS' ADVISORY
COUNCIL**

I. BACKGROUND OF PETITION

The Maricopa County Attorney's Office has filed a petition to amend Rule 22.5, Arizona Rule of Criminal Procedure, to regulate post-juror contact.¹ The amendment would add a new subsection (c) to provide that after a verdict, contact with jurors by a party or party's agent or representative would be prohibited after the 10-day time period of Rule 24.1 ("Motion for New Trial") unless specifically authorized by the court upon motion and a finding of good cause. Certain notice provisions are also written into the proposed amendment. Because the purpose

¹ A different petition on the same general topic was filed last year in R-19-0008.

1 behind this petition is to further protect, post-verdict, the rights and privacy of jurors
2 consistent with existing laws and rules, the Arizona Prosecuting Attorneys'
3 Advisory Council ("APAAC") supports the proposed amendment to Rule 22.5. The
4 proposal protects the jury deliberative process, promotes finality of verdicts and the
5 integrity of the jury system, and prevents post-verdict harassment of jurors.
6 However, APAAC recommends that petitioner consider a modification to its petition
7 to address the process for the proposed notification provisions.
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10 **II. DISCUSSION/ANALYSIS**

11 The petition sets forth numerous Arizona rules and statutory provisions aimed
12 at protecting the privacy interests of jurors who have been summoned to service.
13 Ariz.R.Crim.P. 18.3(b) (jurors' information to be kept confidential), 18.5(e) (jurors'
14 privacy to be reasonably protected by court), 18.6(a) (prospective jurors' to receive
15 orientation information), 23.3(b) (juror's privacy to be ensured during polling);
16 A.R.S. § 21-312 (jurors' information not to be released without authorization). *See*
17 *also* Rule 123(e)(10), Rules of the Supreme Court of Arizona (jurors' information
18 not accessible as public record unless ordered). Case law has further extended these
19 protections. *See State v. McIntosh*, 213 Ariz. 579, ¶ 11 (App. 2006) (because jurors'
20 privacy to be protected in the polling process, foreperson allowed to sign verdict
21 with juror number); *State v. Carroll*, 214 Ariz. 480, ¶ 20 (App. 2007) (confidentiality
22 and "opt-out" provisions of juror exemption statute upheld).
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1 These rules and laws reflect the public policy that protecting juror privacy and
2 safety is of paramount concern in Arizona. However, they do not explicitly address
3 post-verdict contact between a party or party's representative and a past juror. Many
4 federal jurisdictions have local rules that regulate attorneys' post-verdict
5 communication with jurors, often requiring prior court approval and good cause. *See*
6 *Local Rule of Criminal Procedure, U.S. District Court (Arizona), 24.2*
7 *("Communications with Trial Jurors")*, referring to Rule 39.2, Local Rules of Civil
8 Procedure:
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11 **(b) After Trial.** Interviews with jurors after trial by or on behalf of
12 parties involved in the trial are prohibited except on condition that the
13 attorney or party involved desiring such an interview file with the Court
14 written interrogatories proposed to be submitted to the juror(s), together
15 with an affidavit setting forth the reasons for such proposed
16 interrogatories, within the time granted for a motion for a new trial.
17 Approval for the interview of jurors in accordance with the
18 interrogatories and affidavit so filed will be granted only upon the
19 showing of good cause. *See* Federal Rules of Evidence 606(b).
20 Following the interview, a second affidavit must be filed indicating the
21 scope and results of the interviews with jurors and setting out the
22 answers given to the interrogatories.

23 LRCiv 39.2(b). *See also* Benjamin M. Lawskey, *Limitations on Attorney Postverdict*
24 *Contact with Jurors: Protecting the Criminal Jury and Its Verdict at the Expense of*
25 *the Defendant*, 94 Colum. L. Rev. 1950, 1955-56 (1994). Federal Rule 606(b) limits
all post-verdict inquiries into a juror's decisional process. *Smith v. Cupp*, 457 F.2d
1098, 1100 (9th Cir. 1972).

1 Consistent with existing Arizona law and similar to the federal rule, proposed
2 Rule 22.5(c) would require, after the time given for a motion for a new trial, a motion
3 by a party and a finding of good cause by the court before post-verdict juror contact
4 would be authorized. This reflects sound public policy and is consistent with current
5 case law. *State v. Olague*, 240 Ariz. 475 (App. 2016), *rev. denied* (counsel
6 prohibited from contacting jurors without a prior showing of good cause and
7 approval from the court). Requiring good cause is not an oppressive standard.
8 Although the phrase has different meanings in different contexts, it generally
9 requires a substantial basis. *State v. Churchill*, 82 Ariz. 375, 380 (1957) (“Good
10 cause means substantial reason, that is, one that offords [sic] a legal excuse.”) *See*
11 *also State v. Eichorn*, 143 Ariz. 609, 610-11 (App. 1984) (good cause means specific
12 facts set forth showing the necessity of the action).

16 Requiring a motion and good cause prior to contact with discharged jurors is
17 a common-sense process that protects jurors’ privacy interests and ensures future
18 citizen participation in the jury process. The proposal does not limit a defendant’s
19 ability to seek post-verdict juror contact; it simply requires a court finding of good
20 cause.

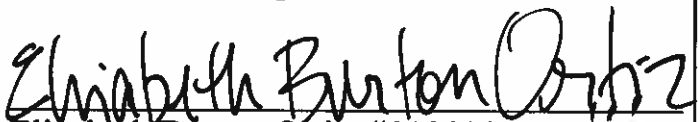
23 APAAC’s one concern with the petition is with the proposed notice
24 requirements. If a court authorizes contact with a juror, under the proposal that juror
25 must be “informed in writing at least 48 hours before any contact” of specific case

1 information and certain rights of that juror. No where in the proposal is contained a
2 process for giving that information or identifying which entity is responsible for
3 providing it – whether it be the court, the prosecutor, or the party seeking the juror
4 contact. APAAC recommends that the petitioner consider this question and modify
5 its proposal to properly address it.
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7 **III. CONCLUSION**

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9 Current rules and statutes do not explicitly address post-verdict contact with
10 jurors by a party or party representative. The proposed amendment to Rule 22.5 is
11 designed only to protect jurors' privacy interests rather than to limit the ability to
12 impeach a jury's verdict. The Arizona Prosecuting Attorneys' Advisory Council
13 recognizes the importance of juror participation in the effective operation of the
14 judicial system. The proposed amendment to Rule 22.5 is supported because it will
15 have the effect of protecting discharged jurors from unwanted contact by a party or
16 party's representative while providing defendants a means of seeking post-verdict
17 juror contact.
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20 RESPECTFULLY SUBMITTED this 19th day of April, 2020.

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24 Executive Director
25 Arizona Prosecuting Attorneys'
Advisory Council

1 Electronic copy filed with the
2 Clerk of the Arizona Supreme Court
3 this 2nd day of April, 2019.

4 By: Hana Cooney
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